Annual Report on the Activities of the Rental Office

January 1-December 31, 2000

Submitted by
Hal Logsdon
Rental Officer

The Rental Office

The establishment of the Rental Office and the appointment of a Rental Officer came into effect in 1988 with the passage of the *Residential Tenancies Act*. The act gives the Rental Officer specific powers and duties which are designed to resolve disputes between landlords and tenants who have entered into residential tenancy agreements. The Rental office provides an important service to both landlords and tenants as a convenient source of information regarding the obligations and responsibilities contained in tenancy agreements.

A Source of Information for Landlords and Tenants

The Rental office is an important source of information for both landlords and tenants. Most problems between landlords and tenants are solved simply by understanding the rights and responsibilities you have as either a landlord or tenant. Many tenants and a surprising number of landlords are unaware of the law that governs their relationship. The provision of information is probably the single most important function of the office, eliminating conflict and problems before they start.

The Rental office also provides written information on landlord/tenant issues and a host of standard forms consistent with the NWT legislation. Like the day-to-day inquiries, the written material helps to solve problems before they start.

From time to time the Rental office is called upon to make presentations to groups of tenants, property managers or others involved in residential tenancy matters. We provide these services free of charge in the belief that informed and knowledgeable landlords and tenants are more likely to respect the rights and obligations of each other and less likely to end up in a conflict situation.

The Investigation of Problems and Mediated Solutions

Problems are often reported to the Rental office without a formal application being filed. For example, tenants often call when a landlord has failed to promptly return a security deposit. A brief investigation into the matter and a verbal notification of the results to the parties are often all that is necessary to resolve the problem. Occasionally, the parties will agree to a mediated solution to the problem without recourse to a formal hearing or the issuance of an order.

Adjudication

Often, landlords and tenants can not agree or one of the parties wants a decision which can be enforced, should the other party fail to abide by that decision. In these cases, the Rental Officer is empowered to hold a hearing and, after hearing the evidence and testimony of both parties, render a decision which has the same force as a Territorial Court order. Most disputes are settled in this manner as the majority of disputes concern non-payment of rent and an enforceable decision is desired by the applicant.

Enforcement of the Act

The contravention of certain sections of the *Residential Tenancies Act* and certain actions described in the Act are offences. Upon summary conviction, offenders are liable to a fine. Few choose to ignore the law when informed but occasionally the Rental Officer is required to investigate allegations of contraventions which could lead to charges being laid.

2000 Activities

Mr. Hal Logsdon served as Rental Officer throughout the year. Mr. Logsdon was appointed on April 1, 1999. Ms. Kim Powless continued to serve as the Rental Office Administrator during the year.

Many of our forms were reprinted in 2000, providing an opportunity to improve formats and make other minor changes. We discontinued use of the pro-forma tenancy agreement in favour of the tenancy agreement which is contained in the *Residential Tenancies Act*.

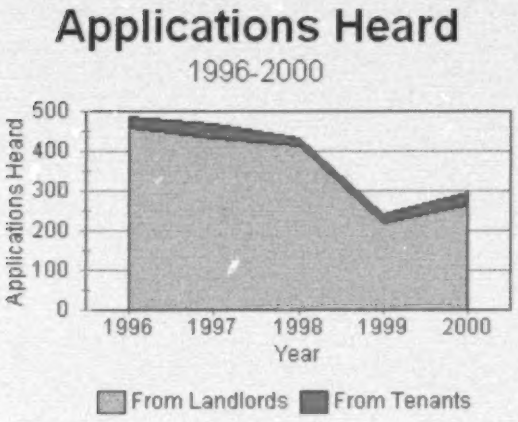
The Rental Officer met with staff of several social housing agencies during the year to familiarize them with the Act, procedures for filing applications and the hearing process. An open house, specifically for tenants, was held in Inuvik. Despite the high volume of calls received from tenants in that community, the open house was poorly attended, leading us to believe that our toll-free line is perhaps the most effective way of addressing tenant inquiries.

In the second half of the year as vacancy rates began to fall and fuel prices climbed, we produced a one page information sheet entitled *What you Should Know About Rent Increases*. It has proved to be quite useful to both landlords and tenants as rent increases have become common in many communities.

Trends and Issues

The number of applications filed in 2000 increased by 32% over 1999 although the volume of applications remains lower than the volumes experienced prior to the division of the NWT. Landlords continued to file the majority of applications and most of the increase in total volume was attributable to applications filed by landlords.

The Rental Officer conducted 295 hearings in 2000, of which 89.5% were based on applications filed by landlords. This represents a 23% increase in the total number of hearings compared to 1999. Hearings were held on 66 dates during the year, 33 dates heard by telephone and 33 heard in person. Of the 295 applications heard, 79 were heard by telephone

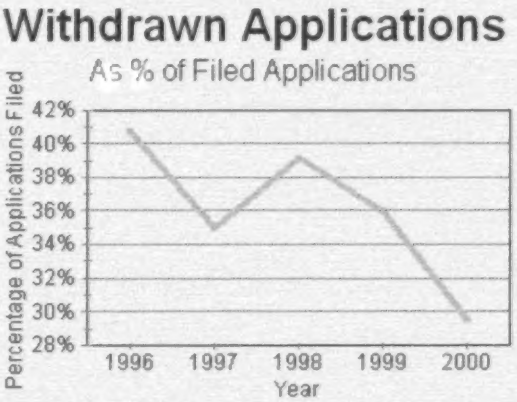


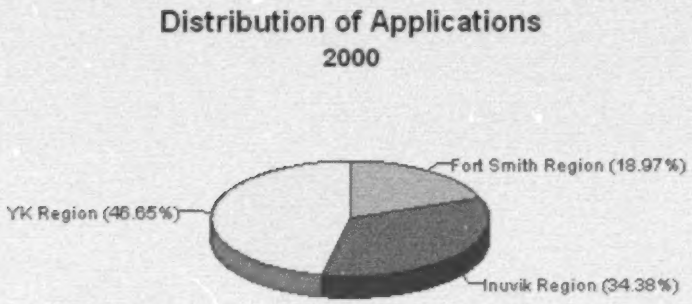
and 216 in person. Telephone hearings continue to be an effective way to hear matters in a timely manner, particularly when only one or two applications are received from a community outside Yellowknife or when the parties reside in different communities.

Formal mediation of disputes continues to be an uncommon occurrence. Most disputes involve the non-payment of rent, many of which are uncontested by the respondent. It is common to mediate a scheduled repayment of the rental arrears, but the applicant normally wants such a schedule included in an order so that it is enforceable. The unwillingness to participate in mediated settlements is largely a function of the time it takes to obtain a order. Few applicants want a mediated settlement if they must then initiate a lengthy process to obtain an enforceable order if the mediated agreement falls apart.

Often, the dispute between parties is resolved to the satisfaction of the applicant before a hearing is held, resulting in the withdrawal of the application by the applicant. In other cases, the application is withdrawn by the Rental Officer because the applicant has failed to serve the application on the respondent. In previous years the percentage of filed applications which are withdrawn have been as high as 40%. Over the past three years, this figure has been falling resulting in a low of 29% for 2000.

Although landlords file the majority of applications, tenants rely on the Rental office as a source of information and make good use of the toll-free number to make inquiries. We also notice that the number of people requesting information on the internet appears to be growing rapidly. At the present time, tenants and landlords are only able to access the *Residential Tenancies Act* on-line but future web page development is planned.

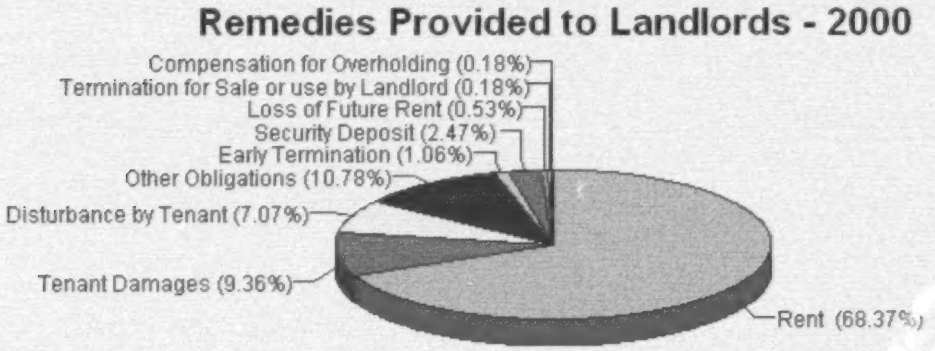




Access to information through the internet may not entirely replace the telephone as a means of inquiry but may enable the public to download printed material which can take a week or more to get from place to place via the mail system.

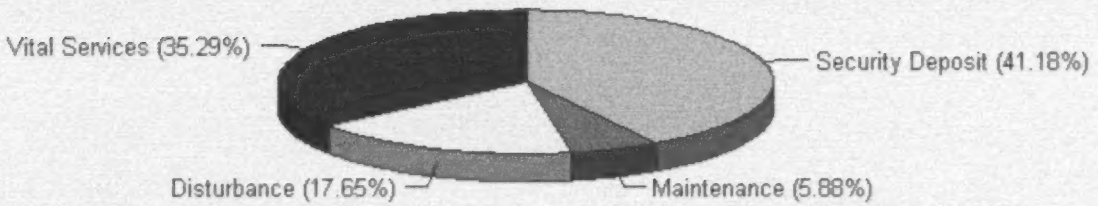
Applications are received from most communities in the NWT but applications from the major centres continue to make up the bulk of filed applications. The regional distribution of applications filed from Western Arctic communities in 2000 shifted little from 1999 levels with the exception of an increase in the Fort Smith region which was the result of an unusually large number of applications from one landlord in Fort Providence.

The majority of remedies provided to landlords are for the payment of rental arrears, followed by remedies for the breach of other tenant obligations included in a written tenancy agreement and tenant damages to the premises. Remedies for the breach of other obligations most often relate to the payment of utilities but may include a variety of obligations contained in a written tenancy agreement. The pattern of remedies requested by and provided to landlords has not changed significantly in 2000, compared to 1999



Remedies most sought and provided to tenants involve the return of security deposits retained by the landlord after the termination of the tenancy agreement followed by remedies for the landlord's failure to provide vital services and disturbance of the tenants enjoyment or possession of the rental premises. The incidence of orders against landlords for disturbance of enjoyment or possession and failure to provide vital services increased in 2000 and is cause for concern. The interference with vital services and the disturbance of possession are among the more serious breaches of a landlord and may result in charges under section 91 of the Act.

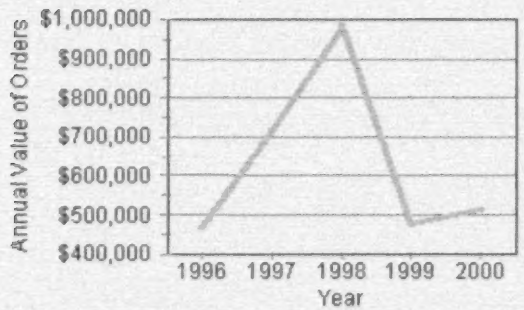
Remedies Provided to Tenants - 2000



In 2000, 239 orders were issued which required monetary payment to be paid by one party to the other. The total value of these orders was $514,486. Both the number of orders and the total monetary value of orders issued increased marginally from 1999 values.

Monetary Relief Ordered

1996-2000

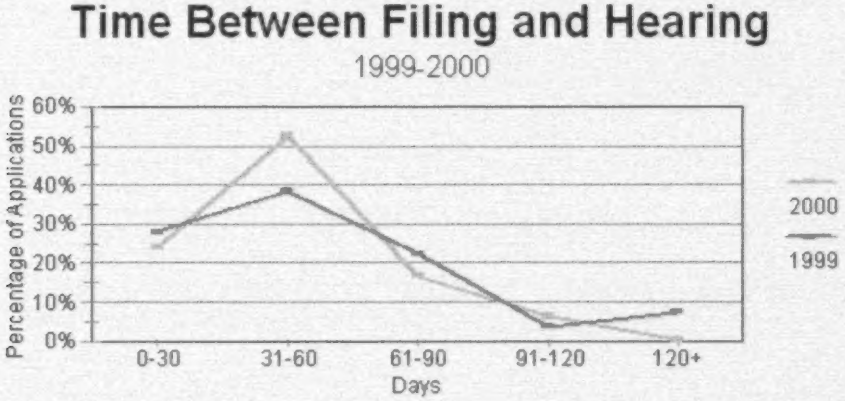


The number of terminations included in orders increased significantly 2000. Of all orders issued in 2000, 35.6% included an order for termination of the tenancy agreement between the parties. It should be noted however that many of these termination orders were conditional in nature and did not necessarily result in the termination of the tenancy agreement. In many cases involving rent, the tenancy agreement is terminated by order unless the tenant pays the rent arrears by a particular date.

We have no way of tracking how many orders for termination actually result in a termination of the tenancy agreement but we suspect that many are rendered ineffective because the tenant adheres to the conditions set out in the order.

The time it takes from the time an application is filed to the time it is heard depends on a number of factors, some of which are outside the control of the Rental office. Users of the services occasionally complain about the length of time it takes to resolve a dispute and we are doing what we can to make the administration of the process move as rapidly as possible. In this regard we continue to make significant progress. 66.3% of applications heard in 1999 were heard within 60 days of filing and 88.8% were heard within 90 days of filing. In 2000 the percentage of applications heard within 60 days increased to 76.7% and those heard within 90 days of filing increased to 93.2%

It has been our experience that where the filed application is not delayed by mail, the applicant serves the respondent quickly, the hearing notices are deliverable and the parties do not seek any postponements, an application will be heard within 60 days of filing. However any or all of the above factors can delay the process considerably, and often do.



Considerations for Change

The following suggestions for legislative changes have been assembled from our experience in administering the *Residential Tenancies Act*, and through discussion with landlords and tenants about their experiences with the Act.

1. **Amend section 54 to allow for a binding termination notice subject to appeal by the tenant in cases where a substantial breach of the tenancy agreement has occurred.** Perhaps the most common complaint concerning the administration of the *Residential Tenancies Act* is the length of time it takes to terminate a tenancy agreement where a tenant has substantially breached the tenancy agreement.

   The inability of the legislation to provide timely remedies for substantial breaches of the tenancy agreement has, on numerous occasions, prompted landlords to take eviction into their own hands rather than suffer economic loss or watch their quality tenants seek accommodation elsewhere. Increased losses inevitably translate into business expenses which in turn drives rents higher and produces higher social housing costs. Tenants as well, are adversely affected by the inability of the Act to deal promptly with these remedies. The noisy, disturbing or dangerous tenant can continue to annoy or threaten the safety of other tenants for months on end before the landlord is able to terminate the tenancy and provide the other tenants with the environment they promised to supply.

   Section 54 of the Act is intended to provide early termination of the tenancy agreement in cases of a serious or repeated breach by a tenant, but in reality only permits the landlord to give notice. If the tenant does not vacate the premises, the landlord must proceed with an application to the Rental Officer, serve the tenant and await a hearing to obtain an order. If the landlord is successful in obtaining an order for termination and the tenant does not vacate, the landlord must then make application to the Supreme Court for a writ of eviction. The entire process can take weeks or months depending on the location of the premise and the scheduling of hearings and court. A tenant who is seriously damaging the premises and\or not paying rent may create an extraordinary loss for the landlord before a writ of eviction is obtained. As well, a tenant who is constantly creating a disturbance may continue to disturb other tenants or even jeopardize their safety for months before the landlord can legally remedy the situation.

   A revision of section 54 to allow for a termination notice to result in a legal termination of the tenancy agreement unless appealed by the tenant within a specified period of time would cut down on the time required for termination when serious breaches are involved. The landlord would be required to use an approved form of the termination notice and be required to prove service of the notice on the tenant. The notice would specifically advise the tenant of the right to appeal and the process for filing such an appeal. If the tenant appealed, the Rental Officer would hear the matter. If the tenant failed to appeal, the landlord could seek a writ of eviction from the Supreme Court.

2. **Allowing for service of filed applications within 14 days of receiving filed applications rather than 14 days from the date of filing.**
Currently filed applications are required to be served within 14 days from the date of filing (Sec. 68(2)). There may be some question of law as to whether or not an application is valid if not served within the specified time. The Rental Officer is not provided with the authority to extend this time requirement. Given our geographical area and postal system this provision has been proved to be unrealistic.

3. **Amend section 62(1) to change the reference to section 9(2) to read section 5(2).**
This is a typographical error.

4. **Require a 30 day notice for a tenant to terminate a periodic tenancy agreement, regardless of the duration of the agreement.**
The current distinction, based on the duration of the tenancy agreement is unnecessary and makes it difficult for tenants to make a transition between one tenancy agreement and another. I see no reason for the distinction and most landlords and tenants fail to see why the duration of the agreement should be a factor.

5. **Amend section 14 to permit a deposit to hold a premise for a future tenancy and expressly prohibit the collection of a security deposit prior to the effective date of the tenancy agreement.**
Landlords are not permitted to collect any deposit or fee other than the security deposit allowed under section 14. Although the security deposit is supposed to be collected at the commencement of the tenancy, landlords will often collect it in advance of the occupancy date. Occasionally the prospective tenant will fail to take possession and the landlord will claim the security deposit as damages. The landlord has no right in law to do this as only damages to the premises and rent may be deducted from a security deposit. The prospective tenant can not file an application since section 14 permits only applications from tenants and landlords.

Provisions which would allow for a deposit to hold a premise would be useful to both landlord and tenant. The maximum amount should be prescribed, preferably in regulation, and provided the tenancy commences, the deposit would have to be applied to rent or the security deposit at the commencement of the tenancy. If the tenant failed to take possession, the deposit would be forfeited.

Provisions should also be made to specifically prohibit the collection of a security deposit prior to the commencement of the tenancy and provide remedies and/or penalties in cases where this prohibition is violated.

6. **Amend sections 16 and 41(3) to allow for rates of interest to be fixed by regulation.**
The interest rates for late rent penalty and security deposits are not only unrealistic, but cumbersome and difficult to calculate. The interest rate for late rent is so low that rent will likely be the last item anyone pays if they find themselves short of funds. As well it should be easy to calculate.

Similarly the rate for security deposits is usually higher than the landlord is able to obtain unless he violates the provisions of maintaining the amounts in trust. The rate and the method of calculation should be reasonable, simple and set through regulation.

7. **Eliminate the "subsidized public housing" definition and introduce a "social housing" definition which would include housing programs and providers approved by regulation.**
The current definition, which relies in part on receiving funding through the *National Housing Act* or *Northwest Territories Housing Corporation Act*, no longer reflects the realities of social housing in the NWT. Important provisions regarding security of tenure, subletting, eligibility and continued occupancy, rent increases and security deposits are tied to this definition which is quickly becoming obsolete.

We suggest that a definition "social housing" replace the current "subsidized public housing" definition. Specific projects to be considered "social housing" would be approved by regulation which could be amended from time to time.

8. **Section 71 be amended to allow the method of service to include telecopiers (fax).**
Presently all notices or documents relating to a residential tenancy must be served in person or by registered mail. Limiting service of documents to in-person or registered mail creates unnecessary time delays. The most recent amendments to the Northwest Territories Rules of Court now recognizes telecopiers (Section 40) as an acceptable form of service.

9. **Revise sections 76 and 77 regarding mediation and the decision to hold a hearing**
Section 76 requires the Rental Officer to inquire into a matter arising from an application and assist the parties in resolving the matter by agreement before holding a hearing to determine the matter. Most applications involve the non-payment of rent and many are uncontested by the respondent. The applicant/landlord in these cases does not simply want an agreement by the tenant that rent will be paid, they seek an order that can be enforced if payment is not made. The Rental Officer may only issue an order after making a determination through a hearing.

The requirement to inquire into the matter only serves to add unnecessary time to the process. Removing the requirement would not diminish the Rental Officer's ability to mediate where mediation is possible. In many cases, particularly those involving rent, the remedy contained in the order is a result of mediation that takes place in the context of a hearing. For example, it is common for a Rental Officer to mediate an agreement as to how rent arrears are to be paid. Often a schedule of payment or a deadline for payment agreed to by both parties is incorporated in an order.

It is suggested that the wording in Section 76 be altered by changing "shall inquire" to "may inquire", giving the Rental Officer the flexibility to determine without inquiry, whether a matter should proceed directly to hearing.

Similarly it is suggested that section 77(1) be altered to remove the reference to inquiry to read, "Where a rental officer is of the opinion that.....

Statistics for the Year
January 1, 2000 to December 31, 2000

Applications to a Rental Officer

	1996	1997	1998	1999	2000
Applications Filed	627	587	470	339	448
By Landlords	594	534	450	302	409
By Tenants	33	53	20	37	39
Applications Heard	487	468	429	240	295
From Landlords	459	431	413	218	264
From Tenants	28	37	16	22	31
Applications Withdrawn	255	205	184	122	132
By Applicants	183	145	156	79	102
By Rental Officer	72	60	28	43	30

Distribution of Applications

	1996	1997	1998	1999	2000
Fort Smith Region	20%	16%	28%	8%	19%
Inuvik Region	34%	26%	22%	37%	34%
Yellowknife Region	46%	58%	50%	55%	47%

Remedies Ordered After a Hearing

Landlords	1999	%	2000	%
Rent (Section 41)	173	63%	387	68%
Tenant Damages (Section 42)	27	10%	53	9%
Disturbance (Section 43)	6	2.0%	40	7%
Other Obligations of Tenant (Section 45)	35	13%	61	11%
Early Termination (Section 54)	9	3%	6	1%
Security Deposit (Sections 14 & 18)	11	4%	14	2%
Loss of Future Rent (Section 62)	11	4%	3	.5%
Termination for Sale or Change of Use (Section 58)	2	1%	1	.2%
Compensation for Overholding (Section 67)	1	.3%	1	.2%
Tenants	**1999**	**%**	**2000**	**%**
Security Deposit (Section 18)	10	67%	14	41%
Maintenance (Section 30)	5	33%	2	6%
Disturbance (Section 34)	0	0%	6	18%
Vital Services (Section 33)	0	0%	12	35%

Terminations Ordered

	1996	1997	1998	1999	2000
Requested by Tenant	1	2	0	1	1
Requested by Landlord	122	81	98	63	104
As % of Applications Heard	25%	18%	23%	27%	36%

*includes orders which terminate tenancy agreements only if specific conditions are not met.

Value of Compensation Ordered

	1996	1997	1998	1999	2000
Total Orders Granting Monetary Relief	327	320	285	201	239
Total Value of Orders Issued	$468,327	$716,971	$983,192	$477,161	$514,486
Average Value	$1432	$2241	$3450	$2374	$2153

Elapsed Time Between Filing Date and Hearing Date
Applications Heard During Period

	1999	%	2000	%
0-30 days	67	27.9%	71	24.1%
31-60 days	92	38.3%	155	52.5%
61-90 days	54	22.5%	49	16.6%
91-120 days	9	3.8%	19	6.4
120+ days	18	7.5%	1	0.3%